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CHARLES ELMOR

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1929.

STATE OF MISSOURI, at the Relation of MISSOURI INSURANCE COMPANY, a Corporation, Relator, Appellant,

vs.

FREDERICK GEHNER, as Assessor of the City of St. Louis and as President of the Board of Equalization of the City of St. Louis, A. R. SCHOLLMEYER, CLYDE CARSON, WILLIAM L. HECKMANN and JOSEPH J. LICHTENFELD, as Members of the Board of Equalization of the City of St. Louis, Appellees.

No. 222.

STATEMENT AS TO JURISDICTION ON APPEAL.

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LON O. HOCKER,
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STATEMENT AS TO JURISDICTION ON APPEAL.

May It Please the Court:

The appellant, in support of the jurisdiction of this Court to review the above-entitled cause on appeal, respectfully represents:

A.

Statutory Provisions Sustaining Jurisdiction.

Section 237 of the Judicial Code as amended, being Section 344, Title 28, U. S. Code Ann., provides:

> "(a) A final judgment or decree in any suit in the highest court of a state in which a decision in the suit could be had * * * where is drawn the question of validity of the statute of any state, on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity, may be reviewed by the Supreme Court upon a writ of error. The writ shall have the same effect as if the judgment or decree had been rendered or passed in a court of the United States. The Supreme Court may reverse, modify or affirm the judgment or decree of such state court, and may, in its discretion, award execution or remand the cause to the court from which it was removed by the writ."

Section 861a, Title 28, U. S. Code Ann., Act of Jan. 31, 1928, Ch. 14, 45 Stat., is as follows:

> "The writ of error in cases, civil and criminal, is abolished. All relief which heretofore could be obtained by writ of error shall hereafter be obtainable by appeal."

Section 861b, Title 28, U. S. Code Ann., Act of Jan. 31, 1928, Ch. 14, Sec. 2, 45 Stat. as amended by Act of Apr. 26, 1928, Ch. 440, 45 Stat., provides:

"The statutes regulating the right to a writ of error, defining the relief which may be had thereon, and prescribing the mode of exercising that right and of invoking such relief, including the provisions relating to costs, supersedeas and mandate, shall be applicable to the appeal which the preceding section substitutes for a writ of error."

B.

Date of Decree and Date of Application for Appeal.

The decree sought to be reviewed was originally entered on February 11, 1929 (Tr., pp. 35, 41[1]).

Thereafter, on February 20, 1929, within the time allowed by Rule 21 of the Supreme Court of Missouri, the appellant, relator below, filed its motion for a rehearing in said court (Tr., p. 41).

Thereafter, after consideration of said motion for rehearing, on March 27, 1929, the Supreme Court of Missouri overruled said motion for rehearing and modified its opinion in said cause (Tr., p. 62).

The petition for appeal herein was presented to the Chief Justice of the Supreme Court of Missouri on June 24, 1929, within three months after the date of the overruling of relator's motion for rehearing, and the appeal was allowed on said June 24, 1929 (Tr., pp. 76-77).

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[1]All references to the record are to the pages of the certified, unprinted transcript or record prepared by the Clerk of the Supreme Court of Missouri, on file with the Clerk of the Supreme Court of the United States. The record has not yet been printed.

C.

Nature of Case and Ruling Below.

Section 6386, Revised Statutes of Missouri, 1919, is construed and applied by the original opinion of the Supreme Court of Missouri, as well as by the modified opinion in this case (Tr., pp. 35, 38). Said section 6386, so far as pertinent, is as follows:

> "Sec. 6386. **Home Companies Subject to What Tax.** —The property of all insurance companies organized under the laws of this state shall be subject to taxation for state, county, municipal and school purposes, as provided in the general revenue laws of this state in regard to taxation and assessment of insurance companies. Every such company or association shall make returns, subject to the provisions of said laws: First, of all the real estate held or controlled by it; second, of the net value of all its other assets or values in excess of the legally required reserve necessary to reinsure its outstanding risks and of any unpaid policy claims, which net values shall be assessed and taxed as the property of individuals."

By its opinion the Supreme Court of Missouri, after referring to the provisions of Section 6386, R. S. of Mo. 1919, states:

> "The question in this case is: How shall the net value of the taxable assets be determined? * * * We know of no more equitable way to determine such

value than that of apportioning the total liability between the two classes of assets (the taxable and the nontaxable) according to their respective amounts and then deducting from the taxable assets the liabilities so apportioned to that class'' (Tr., pp. 35-37, 38-40).

The Supreme Court of Missouri then calculates the net taxable assets of relator by including in its gross assets the sum of $94,000.00, representing United States Government bonds owned by it, thus resulting in a net value of relator's assets amounting to $74,136.52, instead of $20,-778.64, which would have been the result if the relator were permitted to deduct its Government bonds and also to deduct the reserve, as provided in section 6386.

By its motion for rehearing the relator contended that the Supreme Court of Missouri erroneously included the amount of relator's Government bonds in its gross assets in calculating the net taxable value of its personal property, and that the decision and opinion of the Supreme Court of Missouri was in violation of Section 9 of Article I of the Constitution of the United States, giving Congress power to borrow money on the credit of the United States, as construed by numerous decisions by the Supreme Court of the United States, and in contravention of the due-process and equal-protection clauses of Section 1, of Article XIV of the Amendments to the Constitution of the United States. By its motion for rehearing the relator also contended that the construction of Section 6386,

R. S. of Mo. 1919, by the Supreme Court of Missouri was in violation of the express provisions of U. S. Rev. Stat., Sec. 3701, Sec. 68, 16 U. S. Comp. Stat. 1918, denying states and municipalities the power to tax Government bonds (Tr., pp. 42-61). In other words, it was contended by relator that the construction and application of section 6386 by the Supreme Court of Missouri, as applied to domestic insurance companies owning Government bonds, made such section repugnant to the constitutional provisions aforesaid, and to the statute of the United States exempting Government bonds from taxation. And the Supreme Court of Missouri was particularly cited to the principles set forth in the following decisions of the Supreme Court of the United States on similar questions:

Farmers Bank v. Minnesota, 232 U. S. 516;
Northwestern Mutual Life Ins. Co. v. Wisconsin, 275 U. S. 136;
National Life Ins. Co. v. United States, 277 U. S. 508;
Miller v. Milwaukee, 272 U. S. 713;
Supervisors v. Stanley, 105 U. S. 305;
McCulloch v. Maryland, 4 Wheat. 316;
Weston v. Charleston, 2 Pet. 448.

D.

Cases Believed to Sustain Jurisdiction.

The following decisions of this Court are believed to sustain jurisdiction of this appeal:

Great Northern Ry. Co. v. Minnesota, 278 U. S. 503, 49 S. Ct. R. 191;

To be attached to page 7 of Appellant's Statement as to Jurisdiction in case No. 222.

The record shows immunity of U. S. Bonds was asserted throughout proceedings (R. 7-8, 11, 15, 17) and constitutional questions raised at the first opportunity.

Merchant's National Bank vs. National Bank, 202 U. S. 295, 299;
C. B. & Q. R. R. Co. vs. Chicago, 166 U. S. l. c. 230-231;
Erie R. R. Co. vs. Purdy, 185 U. S. l. c. 153-154;
Grannis vs. Ordeau, 234 U. S. l. c. 392;
Saunders vs. Shaw, 244 U. S. 317.

The Missouri Court's opinion expressly recognizes the claim of exemption of such bonds and denies the claim on the ground and on account of its theory as to the construction of Sec. 6386 (R. 15).

Sullivan v. Texas, 207 U. S. 416;
Cissna v. Tennessee, 246 U. S. 289;
M. K. & T. R. Co. vs. Elliott, 184 U. S. l. c. 534;
Saltaustall v. Saltaustall, 276 U. S. l. c. 267;
Arrowsmith vs. Harmarning, 118 U. S. 194;
Chicago Life Ins. Co. vs. Needles, 113 U. S. 574.

Nashville C. & St. L. Ry. v. White, 278 U. S. 456, 49 S. Ct. R. 189;

New York v. Zimmerman, 278 U. S. 63, 49 S. Ct. R. 61;

Fox River Paper Co. v. R. R. Com. of Wisconsin, 274 U. S. 651, 47 S. Ct. R. 669;

Hanover Fire Ins. Co. v. Carr, 272 U. S. 494, 47 S. Ct. R. 179.

We respectfully submit that this Court has jurisdiction of this appeal by virtue of Section 237 of the Judicial Code, as amended, by Sections 344, 861a and 861b, U. S. Code Ann., Acts of January 31, 1928, and April 26, 1928, above cited.

Respectfully submitted,

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